IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 216 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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RAMSEVAK ISHARI PARSI(HARIJAN) - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MB GANDHI for Applicant(s) : 1,
MR MUKESH PATEL PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 28/06/2007

ORAL JUDGMENT

1.0 By way of this application, the applicant has prayed to quash and set aside the order of the learned Chief Judicial Magistrate, Ahmedabad (Rural), Mirzapur passed in Criminal Case No.1691 of 1994 dated 09.02.1994 as well as order of the learned Additional Sessions Judge, Ahmedabad(Rural), Mirzapur passed in Criminal Appeal No.1 of 1999 dated 31.03.1999.

2.0 The brief facts of the case are that on 09.02.1994, in the early morning when the applicant was proceeding in his truck, the said truck met with an accident with a motor-scooter. On account of the said accident, Nimisha-the original complainant who was driving the said motor-scooter received minor injuries and one boy Gaurang who was traveling as pillion rider on the said motor-scooter lost his life. Therefore, a complaint being F.I.R. No.30 of 1994 was filed by Nimisha against the present applicant. In pursuance to the filing of the aforesaid complaint a criminal case came to be registered against the applicant.

2.1 In connection with the aforesaid case, the applicant came to be convicted. Hence, the applicant preferred appeal against the impugned judgment and order of the learned Chief Judicial Magistrate. In the appeal, learned Additional Sessions Judge confirmed the order passed by the

learned Chief Judicial Magistrate. Hence, the present application.

3.0 Learned Advocate for the applicant has submitted that the Courts below have committed error in not considering the fact that the Investigation Officer was not examined.

3.1 He has further submitted that the Courts below failed to appreciate the fact that there are no evidence which suggest that the deceased lost his life on account of rash and negligent driving on the part of the applicant.

3.2 He has submitted that the Courts below ought not to have awarded separate sentences for convictions under Sections 279 and 304-A of the I.P.C..

3.3 In support of his case, he has placed reliance on a decision of the Hon'ble Apex Court

in the case of ***"Driver Muman Hasanali Mohmadali Vs. State of Gujrat and Anoter"*** reported in AIR 1971 Gujarat 72 wherein at Para-5 it has been held as under,

> "**5.** In the present case, the driving of the vehicle by the accused was found to be both rash and negligent so as to endanger human life or was likely to cause hurt or injury to any person. That constituted an independent offence punishable under Section 279 of the Indian Penal Code. Since the death of that person came to be caused in the same transaction while he was driving the vehicle, he committed another offence punishable under Section 304-A of the Indian Penal Code and, therefore, he cannot be punished with more than one of such offences in absence of any specific provision in law. Since he is punished for the aggravated form of an offence under Section 304-A of the Indian Penal Code, a sentence for an offence under Section 279 of the Indian Penal Code cannot, therefore, be passed. Such a question was considered by the Full Bench of the Bombay High Court in the case of Queen-Empress V. Malu, (1899) 1 Bom LR 142, where it was held that a person who has committed house-breaking in order to commit theft and theft can be charged with and convicted of each of these offences, and then it has said that a Court, awarding punishment under the provisions of Section 71, Indian Penal Code, should pass one sentence for either of the above offences and not a separate one for each offence."

3.4 He has also placed reliance on other decisions of the Hon'ble Apex Court in the case of ***"Baijnath Singh Vs. The State of Bihar"*** reported in AIR 1972 SC 1485 and ***"Mrs. Shakila Khader etc. Vs. Nausher Gama and Another"*** reported in AIR 1975 SC 1324 as well as decision of the Kerala High Court in the case of ***"P. Rajappan Vs. State of Kerala"*** reported in 1986 Cri. L.J. 511 wherein similar principle has been followed.

4.0 Heard learned Counsel for the parties. It is not in dispute that at the time of accident in question the applicant was driving the vehicle in question. It is also not in dispute that on account of the said accident, the deceased has expired. Therefore, the question which requires consideration of this Court is as to whether the accident in question occurred on account of the rash and negligent driving on the part of the applicant or not ?

4.1 The complainant in her complaint as well as in her deposition has stated that on the date of the alleged incident while she was proceeding on her motor-scooter with the deceased as a pillion-rider, at that time, the applicant who was driving a Truck and coming from the opposite direction, dashed the motor-scooter, being driven by the complainant. On account of the said accident, the complainant was thrown away on a heap of sand lying on the side of the road. However, the deceased, who was traveling as pillion rider on the said motor-scooter, was crushed to death by the said Truck driven by the applicant.

4.2 From the 'Panchnama' of the scene of incident produced at Exhibit-20, it transpires that the width of the road at the place of accident is about 14' feet and that some digging work was in progress at the relevant point of time. It is also borne out from the 'Panchnama'

that after the accident, the Truck traveled further by a distance of about 15' feet which is not disputed by the applicant – Driver. Thus, if we consider the evidence on record in the form of 'Panchnama' at Exhibit – 20, it can be said that the applicant was negligent in driving the vehicle in question.

4.3 So far as the contention raised by the learned Advocate for the applicant that the case of the complainant could not be believed to be true since the I.O. has not been examined is concerned, the same could be accepted only if there is contradiction or ambiguity in the evidence of witness/s. In the case on hand, the evidence of the complainant, who is an eye-witness, remains undisputed, which is also supported by the 'Panchnama' at Exhibit - 20.

4.4 Taking into consideration the aforesaid facts, I am of the view that the case of the prosecution would not fall apart if I.O. has not

been examined. It is also pertinent to note that the said contention was not raised before any of the Courts below. Hence, the said contention deserves to be rejected.

4.5 As regards the contention raised by the learned Advocate for the applicant that since the applicant was not arrested from the place of incident and, therefore, he could not be convicted is concerned, the complainant has clearly stated in her complaint and deposition that she had seen the applicant running away from the scene of incident. Even, it is not the case of the applicant that at the time and date of the alleged incident, the applicant was not present at the scene of incident and that he was not driving the vehicle in question meaning thereby, the applicant has not disputed the factum of accident. Hence, the said contention also deserves to be rejected.

4.6 As regards the contention raised by the

learned Advocate for the applicant that there is no evidence which suggests that the deceased expired on account of rash and negligent driving on the part of the applicant is concerned, it is evident from the inquest 'Panchnama' produced at Exhibit- 21 and the post-mortem report produced at Exhibit-22 that the deceased lost his life due to injuries received by him on account of the accident and not on account of being thrown into the sand ditch as has been contended by the learned Advocate for the applicant. Hence, the said contention also requires to be rejected.

4.7 So far as the contention raised by the learned Advocate for the applicant that the Courts below ought not to have awarded separate sentences to the applicant for the offence punishable under Section 279 and Section 304-A of the I.P.C. is concerned, Section 279 of the I.P.C. deals with punishment for rash and negligent driving on a public way and provides with imprisonment of either description for a

term which may extend to six months or with fine which may extend to one thousand rupees, or with both. Whereas, Section 304-A deals with causing death by negligence and provides with imprisonment of either description for a term which may extend to two years or with fine or with both.

4.8 In the case on hand, the applicant has been convicted for each of the two offences viz. Under Section 304-A and 279 of the I.P.C.. For conviction under Section 304-A of I.P.C., the applicant has been sentenced to undergo imprisonment for a period of six months while for conviction under Section 279 of I.P.C., the applicant has been sentenced to undergo imprisonment for a period of one month. It is pertinent to note that both the sentences have been ordered to run concurrently by the Court below.

4.9 It is contented by the learned Advocate

that the accused can be convicted for each of the two offences but, separate sentence cannot be passed for offence under Section 279 of I.P.C. in view of Section 71 of the I.P.C. It is true that the applicant has been convicted for the offences under Section 279 & 304-A of the I.P.C. However, the trial Court has specifically observed in the impugned order that both the sentences shall run concurrently. In that view of the matter, even if sentence for conviction under Section 279 of the I.P.C. is sustained, the same would not have any bearing on the total sentence that the applicant shall have to undergo since the sentences under Section 279 & 304-A of the I.P.C. have been ordered to run concurrently. Hence, the decision relied upon by the learned Advocate for the applicant in ***"Muman Hasanali Mohmadali's"*** case (supra) cannot come to the rescue of the applicant.

4.10 Considering the facts and circumstances of the case and the evidence produced on record,

I am of the opinion that the Courts below have not committed any error that may warrant interference from this Court in this petition. I am in complete agreement with the reasonings given and the findings arrived at by both the Courts below and, hence, the application deserves to be dismissed.

5.0 In the result, the application stands dismissed. Rules is discharged.

(M.D. Shah,J.)

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